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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,178	10/21/2002	Anthony J. Hilgemann	120671.90018	7849

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/049,178	HILGEMANN ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) *10-12* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-9, drawn to a method of making a food product.

Group II, claim(s) 10-12, drawn to an apparatus.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the method does not require the double wall vessel having inner wall, entry port, lower drain orifice communicating with the inner wall, a steam source , a mixer, a pump connected to the drain orifice or any of the features recited in claim 11.

During a telephone conversation with Keith Baxter on September 12, 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claims 1,7,8-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Step b is unclear; it is not clear what applicant mean by " without substantial release of water" . It is not clear where the water is release from.

In claim 7: Line 3, the first occurrence of the word " step" should be included.

In claims 8-9: Line 1, the word " including" should be inserted before "step" to make the claims clearer.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart.

Stewart discloses a process of making a fat imitator which may be used as additives or replacements for fat containing foods such as process cheese, cheese spread, sausage etc... The process comprises the steps of adding water to a complex carbohydrate to produce a mixture containing from about 33-88% water, heating the mixture at a temperature of about 100 degree C for a period of between about 20-40 minutes, shearing the mixture using a high shear mixer for about 3-15 minutes, adding a carbohydrate to produce a blended mixture, cooling the blended mixture, adding additional ingredients, cooling the final mixture, encapsulating the final mixture and refrigerating the encapsulated product. The complex carbohydrate can be rice grains. The ratio of the complex carbohydrate to water ranges from 1 part water to two parts carbohydrate to four part water to one part carbohydrate. During the heating step, the water is completely absorbed by the carbohydrate. The other ingredients added include corn syrup, rice syrup, maltodextrin sucrose, proteinaceous material and hydrocolloid or gum including starch. The second ingredient is incorporated simply by blending it into the sheared product. (See columns 1-4)

Stewart does not disclose the step of molding and cooling the combined mixture of the rice mixture and a cheese product, the temperature of 85 degree C, the steps performed as both batch process and continuous process, heating the wall of the vessel, the use of a shear pump and scraping the walls of the vessel.

The language comprising in the claims do not exclude the additional steps taught by Stewart. Stewart does not disclose that water is released during shearing; thus, it is obvious the shearing is done without the release of water. Stewart does not disclose

the equipment as in claim 6; however, it would have been obvious to use any equipment as long as it is adequate to perform the shearing action. Stewart discloses the shearing can be done using any appropriate mechanical means. It is obvious that the heating in the Stewart takes place in some type of vessel and that the vessel is heated because the mixture of rice and water is heated to boiling. It would have been obvious to scrap the inner wall of the vessel during heating to ensure that all of the ingredients are sufficiently heated and none sticks to the wall. It would also have been obvious to use lower temperature for longer time or vice versa as long as the end objectives of complete absorption of water and fully gelatinization are obtained. It would also have been obvious to perform the process in batch or continuously depending upon the type of equipment used. Stewart teaches to add the mixture of rice/water to process cheese. It would have been obvious to carry out the steps of molding and cooling depending on the type of cheese product being made. If the cheese requires molding and cooling, it would have been obvious to perform these steps; this can readily be determined by one skilled in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

September 15, 2003

LIEN THAN
PRIMARY EXAMINER
Group 1700